



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2012-0370]**

#### **Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for renewal of exemption; request for comments.

**SUMMARY:** FMCSA has received an application from the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period July 1, 2013, through June 30, 2015, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exemption renewal would allow these exempted drivers to use 30 minutes or more of "attendance time" to meet the HOS rest break requirements providing they do not perform any other work during the break. FMCSA requests public comment on the DOE's application for renewal of the exemption.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS**

**AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The

proposed exemption renewal would be effective from June 30, 2015 through June 30, 2017.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0370 using any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and

the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **Request for Exemption**

Certain motor carriers under contract to the U.S. Department of Energy (DOE) transport “security-sensitive radioactive materials.” DOE requests a renewal of a limited exemption from the hours-of-service (HOS) regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). Section 395.1(q) states that operators of CMVs carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of “attendance time” to meet the requirement for a rest break. Section 395.1(q) allows drivers who are required by § 397.5 to attend a motor vehicle transporting certain types of explosives but perform no other work, to log at least a half-hour of their “attendance time” toward the break.

DOE contends that shipments of security-sensitive radioactive materials require a team of two drivers and the use of a sleeper berth to minimize risk and expedite delivery in a safe and secure manner. DOE asserts that granting a renewal of the exemption would continue to allow team drivers to manage their en-route rest periods efficiently and also perform mandated shipment security surveillance, resulting in a safe and secure driving performance during a long distance trip.

DOE has implemented several technical and administrative controls to ensure the continued effective use of driver on-duty and rest-break time, which would remain in effect under the requested exemption renewal. They include the following:

- Real-time tracking and monitoring of transuranic waste and security-sensitive shipments using DOE's satellite-based systems.
- Use of electronic on-board recorders on trucks, which is contractually required for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules.
- Continuous monitoring of the performance of DOE-qualified motor carriers using the FMCSA Compliance Safety Accountability Program's Safety Measurement System, and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's safety controls can be found in its application for a renewal of the exemption. The application can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable them to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

DOE believes that its contract employee drivers should continue to be allowed to follow the requirements of § 395.1(q) when transporting shipments of security-sensitive radioactive materials. DOE believes that shipments made under the requested exemption renewal would achieve a level of safety and security that is at least equivalent to that which would be obtained by following the normal rest break requirement in § 395.3(a)(3)(ii).

In their initial application, DOE had estimated that 30 power units and 53 drivers would be eligible for the exemption. The proposed exemption renewal would be effective from June 30, 2015 through June 30, 2017.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on DOE's application for a renewal of an exemption from certain provisions of the driver's record of duty status rules in 49 CFR part 395. The Agency will consider all comments received by close of business on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments will be available for examination in the docket at the location listed in the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: March 19, 2015.

**Larry W. Minor,**  
*Associate Administrator for Policy.*

### **BILLING CODE 4910-EX-P**

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